



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
WATER

MEMORANDUM

SUBJECT: Modification of Class I Hazardous Waste Injection Well
"No Migration" Exemptions -- Underground Injection
Control Program Guidance # 74

FROM: Michael B. Cook, Director *Peter L. Cook for*
Office of Drinking Water (WH-550)

TO: Water Division Directors
EPA Regions I - X

PURPOSE

This document provides guidance for modifying "no migration" exemptions from the land disposal restrictions imposed by the Agency in response to the Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA). Class I injection well operators, who have received approval of their petition to the Agency for such an exemption (see 40 CFR 148.20), may seek the Agency's approval to update, alter, modify, or amend the terms of that exemption.

This guidance describes procedures for notifying EPA of technical changes which an operator seeks to make or, where necessary, for seeking a formal modification or reissuance of an exemption. This document provides the following guidance:

- The circumstances when an operator should notify EPA of changes which relate to an exemption
- When it is appropriate to seek formal petition modification or reissuance of the exemption
- When a modification is appropriate, or whether an exemption must be reissued after a review of additional data relating to the proposed change, and
- Under which circumstances and to what extent will public participation be required for comment on any changes.

This document is not intended to be an exhaustive review of all aspects of exemption modifications, but it is intended to provide a basis for updating, modifying, or reissuing exemptions

transport petitions, similarity is shown by demonstrating that the new waste will not alter the hydraulic and chemical behavior of the waste stream, and that the location of the waste plume will not change significantly from the initial demonstration. If the Agency accepts this demonstration, the scope of an exemption should be modified accordingly.

A petition for reissuance is more involved, and also requires proof of compliance with the no migration standard by meeting the requirements set forth at § 148.20, as well as compliance with public notice and comment procedures of 40 CFR 124.10.

I. Nonsubstantive Revisions

Nonsubstantive revisions are changes which do not affect the actual no migration demonstration, but relate to matters addressed in the petition. These types of revisions include changes at an injection facility that are unrelated to the petition or that do not alter technical matters in a petition (an example of a technical matter includes waste stream parameters modeled in the petition). Equipment or process changes at a facility are generally nonsubstantive, although the reporting of such changes may be required for other purposes under the terms of EPA or State-issued permits or regulations.

Examples of nonsubstantive changes include, but are not limited to the following:

- Typographical errors in the petition approval notice or underlying documentation.
- Facility change of corporate name, where there is no change in ownership.
- Removal or expiration of conditions imposed prior to well completion and that are **no longer** operative after final field work for the new or recompleted well (e.g. exact injection interval depths are not identical).
- Well perforation location change in an injection interval already modeled in the approved petition.

Facility operators should give the Agency notice of such nonsubstantive changes promptly in writing, or when the need for a typographical change is recognized. Although nonsubstantive revisions do not require the Director's approval, a reply indicating agreement or disagreement that the change is nonsubstantive will be sent by the Agency. All correspondence regarding nonsubstantive changes will be placed in the Administrative Record for the petition. Public notice or a comment period are not necessary for nonsubstantive changes

In these examples, it must be demonstrated that the location of the waste plume will not move significantly beyond what was modeled in the initial demonstration. In all such cases, the operator must receive the Director's approval prior to the initiation of any changes.

Changes consistent with operational parameters, or within defined ranges, described in the petition can be made at any time without notice.

A. Newly Listed or Identified Hazardous Waste

Where a waste component covered by the initial demonstration becomes newly listed or identified by the Agency as hazardous pursuant to 40 CFR Part 261 (such as wastes in the Toxicity Characteristics Rule. See 55 FR 11798.), it is not necessary to make a more detailed showing. However, the operator should inform the Agency in writing, that a waste which is already being injected under an existing exemption has been newly listed or identified. Notice should be given by the operator prior to the effective date of any rules prohibiting the land disposal of such waste, and should identify the rule and waste affected. This notice should also state that the waste was already the subject of a no migration demonstration and reference applicable portions of the petition. A request for exemption modification pursuant to 40 CFR 148.20 (f) on the basis of the demonstration that accompanied the initial petition should be made. The Director will send his decision regarding the modification to the facility operator prior to the date(s) restricting injection of such waste.

B. Modification for New Waste or New Constituent

Where an operator seeks to inject a new waste not the subject of the initial demonstration, but the new waste is similar to wastes included in the initial petition, the operator should submit data to demonstrate that the additional waste will behave hydraulically and chemically in a similar manner to injected wastes. A demonstration must be made that the new or altered waste will not interfere with the containment capability of the injection zone and the location of the waste plume will not significantly differ from the initial demonstration. The demonstration should be judged by determining whether the new or altered waste, when added to the injected waste stream, will cause the injected wastes to behave differently from the waste stream modeled in the initial demonstration.

The submission should include a demonstration that the new waste is compatible, of similar density, and mobility. The demonstration should be submitted in writing, and should include supporting documentation sufficient to establish the hydraulic

greater than previously modeled, then a reissuance of the exemption is necessary. Otherwise, if there is no need for expanding the size or location of the waste plume, then the similarity standard is met and a modification is appropriate.

F. Agency Approval and Public Notice

If the Director has been satisfied that the similarity standard has been met for a modification, then a modification for the exemption should be issued. If review of further data is necessary, or if the Agency believes that the contemplated change is not sufficiently similar, the Director will inform the operator. If the Agency determines that the addition of a new waste will change the character of the waste stream, or any other change will not meet the similarity standard, the operator then has the option of submitting a petition for reissuance of the exemption pursuant to 40 CFR 148.20 (e).

Public notice following the procedures in 40 CFR Part 124 should be given of the Director's determination regarding modification, unless the Director has denied the modification request and informed an operator that a petition for reissuance should be sought. Public notice should specify the original petition and the modification sought, and should be limited to the modification and supporting documentation, and should not extend to issues raised by the original petition, or any prior modification, because the essential site data and modeling parameters have already been noticed for public comment.

III. Exemption Reissuance

Where an operator seeks to inject an additional waste that will cause the injected fluid to behave in a manner that is not sufficiently similar, where an operator seeks to expand the injection zone either upward or outward or by increasing pressure build-up, where an attempt to demonstrate similarity under §148.20 (f) is unsuccessful, or where new information is available which invalidates the original petition demonstration, it is necessary to submit a petition for reissuance of an exemption under §148.20 (e). Modifications of any conditions for no migration exemptions must also follow reissuance procedures under §148.20 (e), unless the conditions are self-expiring or can qualify as a non-substantive revision.

Petition reissuance for flow and transport demonstrations is directed primarily at those situations where the injected waste plume will move significantly beyond the outward and upward limits defined by the initial petition demonstration. A petition for reissuance must meet the no migration standard set forth in § 148.20.